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**UNITED STATES DISTRICT COURT**  
**EASTERN DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RONALD STEVEN SCHOENFELD,

Defendant.

Case No.: 20-CR-00150-KJM

**VICTIM PACIFIC GAS AND ELECTRIC  
COMPANY'S SUBMISSION IN  
SUPPORT OF RESTITUTION**

Date: January 25, 2021

Time: 9:00 a.m.

Judge: Hon. Kimberly J. Mueller

**I. INTRODUCTION**

At the Court's invitation, Pacific Gas & Electric Company (PG&E) respectfully submits this brief pursuant to its rights as a victim of the offenses committed by Offender Ronald Steven Schoenfeld in this matter. *See* 18 U.S.C. §§ 3663A, 3664, 3771. Schoenfeld's serious criminal conduct has harmed PG&E, its customers, and its third-party contracting partners in numerous ways. For purposes of the Court's restitution determination, this submission focuses on the most obvious and admitted monetary harm Schoenfeld caused to PG&E.

Specifically, PG&E has suffered a recoverable loss, recognized by the Ninth Circuit, in the form of kickbacks Schoenfeld received in exchange for abusing his authority at PG&E to steer company business to All American Logistics (AAL). Based on Schoenfeld's own admissions in his plea agreement, the amount of loss from kickbacks totals \$2,007,164.08, plus \$133,557.24 in prejudgment interest, and which together constitute a total restitution amount to PG&E of **\$2,140,721.32**. While PG&E believes it has suffered additional monetary losses due

1 to Schoenfeld's criminal conduct over the seven years of his conspiracy, PG&E declines to  
2 pursue those losses in a formal restitution hearing given the time-consuming requirements  
3 necessary to prove PG&E's losses from unauthorized rate increases and other inflated charges  
4 beginning more than a decade ago. Accordingly, PG&E instead elects to pursue restitution in an  
5 amount to which the offender already has admitted, plus prejudgment interest, without the need  
6 for testimony or outside evidence.

## 7 **II. BACKGROUND**

8 In August 2020, the government charged Schoenfeld with conspiracy to commit honest  
9 services wire fraud and two counts of money laundering. Dkt. No. 1. Later that month,  
10 Schoenfeld entered into a plea agreement in which he pled guilty to the conspiracy count. Dkt.  
11 No. 12.

12 As he admitted in his plea agreement, Schoenfeld entered into a kickback scheme with  
13 his cousin just months after being hired to oversee PG&E's trucking contracts in 2006. Dkt. No.  
14 12 at A-1. Specifically, Schoenfeld agreed to help his cousin obtain lucrative PG&E contracts  
15 in exchange for 2.5% of the value of those contracts. *Id.* From 2007 to his termination in  
16 October 2014, Schoenfeld perpetrated his criminal scheme by, among other things, sharing  
17 competitor rate information with his cousin to ensure AAL's rates were not lower than  
18 necessary to secure PG&E's business. *See id.* After fraudulently securing AAL's contracts,  
19 Schoenfeld enacted unauthorized increases to some of the rates and fees promised to AAL. *See*  
20 *id.* at A-2. Such unauthorized increases allowed Schoenfeld and AAL to profit at the expense of  
21 and loss to PG&E.

22 Over the course of the conspiracy, Schoenfeld admitted that AAL received at least  
23 \$82,133,142 as a result of contracts obtained through his conspiracy. *Id.* Pursuant to his  
24 agreement with his cousin, Schoenfeld's 2.5% kickback payments total \$2,007,164.08.

## 25 **III. LEGAL STANDARD**

26 The Mandatory Victim Restitution Act (MVRA) "makes restitution mandatory for  
27 particular crimes, including those offenses which involve fraud or deceit." *United States v.*  
28 *Gordon*, 393 F.3d 1044, 1048 (9th Cir. 2004) (citing 18 U.S.C. § 3663A(c)(1)(A)(ii)) (abrogated

on other grounds). The purpose of the MVRA is “to ensure that the loss to crime victims is recognized,” that “[victims] receive the restitution that they are due,” and that the “offender pays the debt owed to the victim as well as to society.” *United States v. Cienfuegos*, 462 F.3d 1160, 1165 (9th Cir. 2006). In achieving these goals, “Congress intended district courts to engage in an expedient and reasonable restitution process, with uncertainties resolved with a view toward achieving fairness to the victim.” *Gordon*, 393 F.3d at 1048.

To trigger mandatory restitution under the MVRA, the government must prove, by a preponderance of the evidence: (1) the number of victims to whom defendant owes restitution and (2) the amount of restitution defendant owes each victim. *United States v. Waknine*, 543 F.3d 546, 558 (9th Cir. 2008) (citing 18 U.S.C. § 3664(e)). If the government proves these two elements, court-ordered restitution is mandatory for each person “directly and proximately harmed as a result of [the covered offenses].” 18 U.S.C. § 3663A(a)(2). A district court is authorized to allow the victim, rather than the government, to prove up its claim for restitution. *United States v. Gamma Tech Indus., Inc.*, 265 F.3d 917, 924-25 (9th Cir. 2001).

In cases involving fraud, the government (or victim) “need not prove each victim’s loss with precision.” *United States v. Sarad*, 227 F. Supp. 3d 1153, 1161 (E.D. Cal. 2016) (Mueller, J.) (citing *United States v. Gallant*, 537 F.3d 1202, 1247 (10th Cir. 2008); *United States v. Jackson*, 155 F.3d 942, 949 n.3 (8th Cir. 1998); *United States v. Teehee*, 893 F.2d 271, 274 (10th Cir. 1990); *United States v. Lewis*, 557 F.3d 601, 615 (8th Cir. 2009)). Rather, restitution is warranted where the government’s or victim’s evidence of loss provides “sufficient indicia of reliability to support its probable accuracy.” *Id.* at 1160 (quoting *Waknine*, 543 F.3d at 557).

#### IV. ARGUMENT

Pursuant to MVRA, PG&E is a victim of Schoenfeld’s criminal conduct and is owed restitution because the money paid to Schoenfeld as kickbacks belonged to PG&E under California law and controlling Ninth Circuit precedent. PG&E is further entitled to prejudgment interest on its monetary loss.

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1           **A. Loss of the Kickbacks is Restitution Under *Gamma Tech***

2           Under *Gamma Tech*, PG&E is entitled to restitution based on the amount of kickbacks  
3 Schoenfeld received as part of his criminal scheme. 265 F.3d at 928-29. *Gamma Tech* involved  
4 a defendant (Stanley) who worked for Pac Ship, a ship-repair company that had contracts with  
5 the Navy. Stanley, who oversaw Pac Ship’s contracts with both its subcontractors and the  
6 Navy, conspired with four subcontractors to receive kickbacks in return for selecting them to  
7 perform work on Navy carriers.

8           After lengthy restitution proceedings, the district court awarded Pac Ship repayment  
9 from all defendants on two separate theories: (1) lost profits, and (2) loss of kickbacks. The  
10 Ninth Circuit affirmed, reasoning that under California law as well as principles of agency  
11 theory, the kickbacks Stanley received belonged to Pac Ship. *Id.* at 928-29 (citing Cal. Labor  
12 Code § 2860; *Bank of Am. Nat’l Trust & Sav. Ass’n v. Ryan*, 207 Cal. App. 2d 698, 705-06  
13 (1962); *Savage v. Mayer*, 33 Cal. 2d 548, 551 (1949); *Fleishhacker v. Blum*, 109 F.2d 543, 545-  
14 46 (9th Cir.1940)). Thus, when “Stanley deprived Pac Ship of the kickback money which  
15 belonged to Pac Ship under California law, Pac Ship suffered a loss in the amount of the  
16 kickbacks.” *Id.* at 929. The court further held that the district court “properly sought to remedy  
17 this loss by ordering Stanley to reimburse Pac Ship for the kickbacks he received.” *Id.*

18           *Gamma Tech* controls here. Schoenfeld admitted in his plea agreement that he conspired  
19 to award PG&E contracts to AAL in exchange for 2.5% of the value of those contracts. Dkt.  
20 No. 12 at A-1. He further admitted that AAL received at least \$82,133,142 for services  
21 provided to PG&E for contracts obtained through the conspiracy. *Id.* at A-2. Thus, based on his  
22 own admissions in the record, Schoenfeld received at least \$2,007,164.08 in kickbacks. Under  
23 *Gamma Tech*, that kickback money belongs to PG&E and the proper remedy for this loss is to  
24 order “[Schoenfeld] to reimburse [PG&E] for the kickbacks he received.” *Gamma Tech*, 265  
25 F.3d at 929.

26           To be sure, Schoenfeld and the government have agreed that Schoenfeld received “at  
27 least” \$1,476,295.15 in kickback payments from AAL. *Id.* at A-2. PG&E is unaware of the  
28 basis for this amount. Notably, this portion of the kickback amount was used to calculate the

1 loss resulting from Schoenfeld's conduct under the Sentencing Guidelines. *See id.* at 10; *see*  
 2 *also* U.S.S.G. § 2B1.1. Schoenfeld and the government's agreement of the minimum amount of  
 3 kickback payments for purposes of a Guidelines calculation does not, however, control the  
 4 Court's determination of a reasonably likely restitution amount. *See United States v. Anderson*,  
 5 741 F.3d 938, 952 (9th Cir. 2013) ("[A] district court should not rely on its calculation of the  
 6 loss under the Sentencing Guidelines to determine the amount of restitution as the two measures  
 7 serve different purposes and utilize different calculation methods.").

8 In sum, Schoenfeld's admissions in his plea, coupled with *Gamma Tech*, establish that  
 9 PG&E suffered a loss of \$2,007,164.08 for restitution purposes.

10 **B. PG&E is Entitled to Prejudgment Interest**

11 Though the MVRA itself does not address prejudgment interest, the Ninth Circuit has  
 12 held that a restitution award to a corporation like PG&E may include prejudgment interest.  
 13 *Gordon*, 393 F.3d at 1059-60. The *Gordon* court affirmed the award of prejudgment interest to  
 14 Cisco for embezzled cash and shares of stock that the company subsequently liquidated. The  
 15 court reasoned that awarding prejudgment interest "reflects the productive purposes for which a  
 16 profit maximizing entity like Cisco uses its cash reserves," even if the company "would not  
 17 necessarily have placed its stock proceeds in an interest bearing account" absent the  
 18 embezzlement. *Id.* at 1059 (internal quotation marks omitted); *see United States v. Qurashi*,  
 19 634 F.3d 699, 704 (2d Cir. 2011) (citing *Gordon* with approval and affirming award of  
 20 prejudgment interest given "absence of evidence that New York Life and MetLife would not  
 21 have put the money at issue to productive use").

22 Here, as in *Gordon*, PG&E would have put the money lost to kickbacks to productive  
 23 use. PG&E lost this opportunity because of Schoenfeld's criminal conduct and an award of  
 24 prejudgment interest is required to make PG&E as whole as possible. Although PG&E certainly  
 25 was deprived of the productive use of its money prior to Schoenfeld's termination in October  
 26 2014, for efficiency purposes, PG&E proposes November 1, 2014 to January 1, 2021 as the  
 27 accrual period for prejudgment interest.  
 28

With respect to the rate of prejudgment interest, the Court should apply the Treasury yield rate prescribed in 28 U.S.C. § 1961<sup>1</sup> that was in effect “prior to the date of the wrongful conduct which caused a plaintiff’s loss.” *Gordon*, 393 F.3d at 1058 n.12. In his plea agreement, Schoenfeld admits that he began receiving kickback payments at least as early as May 2007. Dkt. No. 12 at A-2. Because PG&E incurred countless instances of loss due to Schoenfeld’s conduct that accrued from May 2007 until his October 2014 termination, PG&E proposes the use of a blended rate for each year during the conspiracy based on the following schedule derived from the Treasury rates in Exhibit 1:

Time Period	Rate
Week ending 4/27/07	4.90%
Week ending 4/25/08	1.88%
Week ending 4/24/09	0.52%
Week ending 4/30/10	0.43%
Week ending 4/29/11	0.22%
Week ending 4/27/12	0.18%
Week ending 4/26/13	0.12%
Week ending 10/31/14	0.11%

The average of these rates is 1.05%. Pursuant to § 1961(b), this interest rate is compounded annually, resulting in the following interest calculations:

Year (beginning Nov. 2014)	Compound Interest (annually)	Initial Principal + Accumulated Interest
2014	N/A	\$2,007,164.08
2015	\$21,075.22	\$2,028,239.30
2016	\$21,296.51	\$2,049,535.81
2017	\$21,520.13	\$2,071,055.94
2018	\$21,746.09	\$2,092,802.03
2019	\$21,974.42	\$2,114,776.45
2020	\$22,205.15	\$2,136,981.60
Nov. 2020 – Jan. 2021	\$3,739.72	\$2,140,721.32

Based on these calculations, the prejudgment interest due to PG&E totals \$133,557.24.

<sup>1</sup> Section 1961 directs federal courts to apply a rate “equal to the weekly average 1-year constant maturity Treasury yield.” 28 U.S.C. § 1961(a). Historical Treasury rates are available at <https://www.federalreserve.gov/datadownload/Choose.aspx?rel=H15>. Exhibit 1 contains the weekly average 1-year constant maturity Treasury yield rates, downloaded from the Federal Reserve’s website, for the relevant time period.

V. CONCLUSION

PG&E respectfully submits that for the reasons stated above, PG&E has met its burden to show it is entitled to \$2,007,164.08 in restitution plus \$133,557.24 in prejudgment interest, which together constitute a total restitution amount to PG&E of **\$2,140,721.32**.

DATED: January 4, 2021

By: /s/ Timothy J. Lucey  
TIMOTHY J. LUCEY  
Attorney for  
PACIFIC GAS & ELECTRIC COMPANY

# **Exhibit 1**



[Download Page](#) H.15 Selected Interest Rates for Dec 23, 2020

Series Description Market yield on U.S. Treasury securities at 1-year constant maturity, quoted on

Unit: Percent:\_Per\_Year

Multiplier: 1

Currency: NA

Unique Identifier: H15/H15/RIFLGFCY01\_N.WF

Time Period	RIFLGFCY01_N.WF
2007-04-06	4.94
2007-04-13	4.97
2007-04-20	4.93
2007-04-27	4.9
2007-05-04	4.9
2007-05-11	4.89
2007-05-18	4.86
2007-05-25	4.95
2007-06-01	4.96
2007-06-08	4.98
2007-06-15	4.98
2007-06-22	4.95
2007-06-29	4.94
2007-07-06	4.99
2007-07-13	5
2007-07-20	4.99
2007-07-27	4.91
2007-08-03	4.83
2007-08-10	4.78
2007-08-17	4.44
2007-08-24	4.16
2007-08-31	4.3
2007-09-07	4.27
2007-09-14	4.15
2007-09-21	4.11
2007-09-28	4.05
2007-10-05	4.12
2007-10-12	4.24
2007-10-19	4.14
2007-10-26	3.97
2007-11-02	3.93
2007-11-09	3.72
2007-11-16	3.58
2007-11-23	3.3
2007-11-30	3.25
2007-12-07	3.17
2007-12-14	3.2
2007-12-21	3.28
2007-12-28	3.42
2008-01-04	3.18
2008-01-11	3.04
2008-01-18	2.83

2008-01-25	2.31
2008-02-01	2.23
2008-02-08	2.08
2008-02-15	2.04
2008-02-22	2.1
2008-02-29	1.98
2008-03-07	1.66
2008-03-14	1.52
2008-03-21	1.35
2008-03-28	1.6
2008-04-04	1.63
2008-04-11	1.63
2008-04-18	1.67
2008-04-25	1.88
2008-05-02	1.93
2008-05-09	1.94
2008-05-16	2.07
2008-05-23	2.09
2008-05-30	2.19
2008-06-06	2.14
2008-06-13	2.51
2008-06-20	2.57
2008-06-27	2.46
2008-07-04	2.35
2008-07-11	2.25
2008-07-18	2.21
2008-07-25	2.33
2008-08-01	2.3
2008-08-08	2.23
2008-08-15	2.18
2008-08-22	2.12
2008-08-29	2.17
2008-09-05	2.08
2008-09-12	2.05
2008-09-19	1.69
2008-09-26	1.95
2008-10-03	1.59
2008-10-10	1.24
2008-10-17	1.25
2008-10-24	1.66
2008-10-31	1.44
2008-11-07	1.24
2008-11-14	1.12
2008-11-21	0.96
2008-11-28	0.93
2008-12-05	0.69
2008-12-12	0.5
2008-12-19	0.45
2008-12-26	0.4

2009-01-02	0.37
2009-01-09	0.44
2009-01-16	0.43
2009-01-23	0.43
2009-01-30	0.49
2009-02-06	0.54
2009-02-13	0.6
2009-02-20	0.64
2009-02-27	0.72
2009-03-06	0.68
2009-03-13	0.7
2009-03-20	0.64
2009-03-27	0.59
2009-04-03	0.58
2009-04-10	0.6
2009-04-17	0.55
2009-04-24	0.52
2009-05-01	0.5
2009-05-08	0.53
2009-05-15	0.52
2009-05-22	0.47
2009-05-29	0.49
2009-06-05	0.5
2009-06-12	0.56
2009-06-19	0.51
2009-06-26	0.48
2009-07-03	0.53
2009-07-10	0.46
2009-07-17	0.48
2009-07-24	0.47
2009-07-31	0.49
2009-08-07	0.49
2009-08-14	0.47
2009-08-21	0.44
2009-08-28	0.45
2009-09-04	0.42
2009-09-11	0.4
2009-09-18	0.4
2009-09-25	0.41
2009-10-02	0.39
2009-10-09	0.36
2009-10-16	0.36
2009-10-23	0.39
2009-10-30	0.39
2009-11-06	0.36
2009-11-13	0.33
2009-11-20	0.29
2009-11-27	0.27
2009-12-04	0.29

2009-12-11	0.32
2009-12-18	0.37
2009-12-25	0.41
2010-01-01	0.47
2010-01-08	0.41
2010-01-15	0.35
2010-01-22	0.31
2010-01-29	0.31
2010-02-05	0.33
2010-02-12	0.35
2010-02-19	0.36
2010-02-26	0.34
2010-03-05	0.34
2010-03-12	0.39
2010-03-19	0.41
2010-03-26	0.42
2010-04-02	0.43
2010-04-09	0.47
2010-04-16	0.44
2010-04-23	0.44
2010-04-30	0.43
2010-05-07	0.39
2010-05-14	0.38
2010-05-21	0.35
2010-05-28	0.36
2010-06-04	0.36
2010-06-11	0.33
2010-06-18	0.3
2010-06-25	0.29
2010-07-02	0.31
2010-07-09	0.31
2010-07-16	0.28
2010-07-23	0.27
2010-07-30	0.3
2010-08-06	0.27
2010-08-13	0.25
2010-08-20	0.25
2010-08-27	0.26
2010-09-03	0.25
2010-09-10	0.26
2010-09-17	0.26
2010-09-24	0.25
2010-10-01	0.26
2010-10-08	0.24
2010-10-15	0.22
2010-10-22	0.22
2010-10-29	0.23
2010-11-05	0.22
2010-11-12	0.24

2010-11-19	0.27
2010-11-26	0.27
2010-12-03	0.28
2010-12-10	0.29
2010-12-17	0.3
2010-12-24	0.3
2010-12-31	0.3
2011-01-07	0.29
2011-01-14	0.27
2011-01-21	0.27
2011-01-28	0.26
2011-02-04	0.28
2011-02-11	0.3
2011-02-18	0.29
2011-02-25	0.27
2011-03-04	0.26
2011-03-11	0.25
2011-03-18	0.23
2011-03-25	0.26
2011-04-01	0.3
2011-04-08	0.27
2011-04-15	0.24
2011-04-22	0.24
2011-04-29	0.22
2011-05-06	0.2
2011-05-13	0.18
2011-05-20	0.19
2011-05-27	0.19
2011-06-03	0.18
2011-06-10	0.18
2011-06-17	0.18
2011-06-24	0.17
2011-07-01	0.19
2011-07-08	0.19
2011-07-15	0.16
2011-07-22	0.18
2011-07-29	0.21
2011-08-05	0.16
2011-08-12	0.11
2011-08-19	0.11
2011-08-26	0.1
2011-09-02	0.1
2011-09-09	0.12
2011-09-16	0.1
2011-09-23	0.1
2011-09-30	0.11
2011-10-07	0.11
2011-10-14	0.11
2011-10-21	0.12

2011-10-28	0.12
2011-11-04	0.12
2011-11-11	0.1
2011-11-18	0.11
2011-11-25	0.12
2011-12-02	0.13
2011-12-09	0.11
2011-12-16	0.11
2011-12-23	0.12
2011-12-30	0.12
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2012-03-02	0.18
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2014-07-11	0.11
2014-07-18	0.11
2014-07-25	0.11
2014-08-01	0.12
2014-08-08	0.11
2014-08-15	0.1



2014-08-22	0.11
2014-08-29	0.11
2014-09-05	0.1
2014-09-12	0.11
2014-09-19	0.12
2014-09-26	0.1
2014-10-03	0.11
2014-10-10	0.1
2014-10-17	0.1
2014-10-24	0.11
2014-10-31	0.11